

Committee on Resources

Subcommittee on National Parks & Public Lands

Testimony

Testimony of David T. Terry
Director
Utah School and Institutional Trust Lands Administration
House Resources Committee
Subcommittee on National Parks and Public Lands
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Utah Schools and Land Exchange Act of 1998
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Thank you for the opportunity to testify today. My name is David T. Terry, and I am the director of the Utah School and Institutional Trust Lands Administration (the "Trust Lands Administration"). The Trust Lands Administration is an independent state agency that manages more than 3.7 million acres of land within Utah dedicated to the financial support of public education.

It is my pleasure today to express my unconditional support for H.R. 3830. The May 8, 1998 Agreement between Utah Governor Michael O. Leavitt and Secretary of the Interior Bruce Babbitt, which H.R. 3830 would implement, is truly historic. My predecessors have been grappling with the issue of state inholdings in Utah's national parks, monuments, forests and Indian reservations for many decades. Some of you on the Committee will remember former Utah Governor Scott Matheson's efforts in the 1980s to solve the state inholdings issue once and for all with a statewide exchange known as Project BOLD. Many others have tried as well. Until May 8, all of these efforts had failed.

If enacted, H.R. 3830 will resolve -- fully, fairly, and finally - the problem created by over 375,000 acres of school trust lands within such nationally-recognized areas as Arches National Park, Dinosaur National Monument, the Glen Canyon National Recreation Area, and of course the Grand Staircase - Escalante National Monument. The inholdings problem has been a real one for both the State of Utah and the United States. Our agency has been charged - by Congress - with managing state school trust lands for the financial benefit of Utah's public education system. Yet the development of school trust lands within our national parks and forests is directly at odds with the conservation purposes for which the surrounding federal lands were set aside. The May 8 agreement will allow our agency to do what it does best -- make money for our public schools -- while eliminating this substantial source of development pressure from the parks.

It is appropriate to focus in more detail on the benefits of H.R. 3830, both for the United States and the State of Utah:

- The Negotiated Agreement Will Save Millions in Transaction Costs and Litigation Risk

When Congress passed Public Law 103-93 in 1993, it provided for an appraisal-based process for valuing the state trust inholdings within the parks and forests. This process quickly broke down, for several reasons. First, the sheer magnitude of the lands involved made appraisals, cultural resources reviews, and mineral evaluations expensive and time-consuming for both parties. Second, the State and the United States have

profoundly disagreed on how to value lands with nationally-significant natural characteristics, such as natural arches or ancient Indian ruins. These disagreements resulted in litigation filed last year by the State seeking (as authorized by P.L. 103-93) to obtain a judicial determination of value.

As a result of our trial preparations in the P.L. 103-93 litigation, our agency was confident that it could obtain a judicial determination that the value of its lands was substantially higher than the \$50 million cash payment provided by the May 8 agreement, and that there was little likelihood that value would be determined to be less than that amount. At the same time, litigation is expensive, time-consuming, and risky for all involved. Since P.L. 103-93, the State has spent over \$3.5 million on consultants and lawyers, with more expenses to come. We estimate that the costs to the United States in out-of-pocket costs and staff time have been and would continue to be equally high. Governor Leavitt and Secretary Babbitt's agreement, if ratified by Congress, will save both the State and the United States millions of dollars over the next several years in expenses, and will eliminate millions more in litigation risk.

In addition, the \$50 million payment will be deposited immediately into the State's Permanent School Fund, as a permanent endowment for Utah's schools. Since litigation over value would take several years, the Agreement will instead permit Utah to receive investment returns during that interval.

Those portions of the Agreement dealing with the Grand Staircase - Escalante National Monument will also permit the United States and the State to avoid substantial transaction and litigation costs. My agency manages 337 tracts within the Monument, totaling over 176,000 acres of fee lands, and an additional 24,000 acres of mineral estate. In the absence of agreement on values, both the State and the United States would find themselves repeating the expenses associated with the P.L. 103-93 process, at a cost of millions of dollars. Litigation between my agency and the United States concerning the creation of the Monument would continue as well; trial had been set to begin on March 18 of next year, with intensive discovery disputes already beginning. Instead, with the May 8 agreement, we have replaced acrimony with agreement, and permitted both parties to put their time and resources to more productive use.

- The Agreement Is Fair and Provides Equal Value for Both Sides

The Grand Staircase - Escalante National Monument contains some of the largest untapped energy and mineral resources in the United States. The state trust lands in the Monument are estimated by the U.S. Geologic Survey and other scientific authorities to contain 876 million tons of recoverable coal, a trillion cubic feet of natural gas in coal seams, and varied other resources such as tar sands, uranium, and titanium. At the current time, the Trust Lands Administration has over 100,000 acres in the Monument under lease for exploration/extraction of various minerals. At the time the Monument was created, Andalex Resources was in the final stages of permitting its Smoky Hollow mine, and had expressed intent in writing to acquire leases for thousands of additional acres of trust lands, with an anticipated bonus bid to the State of more than \$4 million, plus royalties from coal production from existing and new coal leases. A consortium of oil and gas firms was planning for a large coalbed methane extraction project, and had leased some 35,000 acres of trust lands for that project. These were not hypothetical projects; reputable and well-capitalized companies were spending dollars "on the ground" to develop these resources. Interest from the mineral industry has continued since the Monument designation; the Trust Lands Administration has recently received lease applications for 115,000 additional acres of oil and gas and titanium lands. Similarly, my agency has received many expressions of interest in purchasing or leasing school trust lands within the Monument for recreational and commercial use, although we have chosen not to pursue such transactions while an exchange seemed possible.

As President Clinton stated at the time of the Monument declaration, the federal government has made the determination that mineral development of this nature is incompatible with preservation of the scientific and cultural resources the Monument was designed to preserve. At the same time, he promised that Utah's schoolchildren - the beneficiaries of the school trust lands in the Monument - would not be harmed by the loss of their lands and resources, and that all reasonable differences in valuation would be resolved in their favor. The May 8 Agreement fulfils that promise in a manner that is fair both to the school trust and the taxpayers of the United States.

The Agreement provides that federal lands containing specific types of resources - coal, coalbed methane, oil and gas, tar sands, and hard minerals - will be transferred to the State in exchange for similar lands and resources of substantially equivalent value found on trust lands in the Monument. None of the lands being acquired by the State are currently in production, and most are unleased (the United States will be acquiring more leased lands than it is giving up). In general, the State is giving up substantially greater quantities of resources than it is acquiring. However, by acquiring larger blocks of lands, the State gains from being able to obtain more effective management control of resource development, which has substantial, although intangible, economic value.

The Agreement does not attempt to place a specific dollar value on these lands and resources; it is our belief from long experience that so many variable assumptions are required to value speculative mineral properties such as those involved on both sides of the exchange that any specific dollar number would be no better than guesswork. The old joke that it is possible to line up all the economists in the world and never reach a conclusion applies to mineral valuation consultants as well. That is not to say that both the State and the Department of Interior did not carefully analyze voluminous resource data, market analyses, and other pertinent information in the course of their negotiations. Both sides did so in the course of the spirited negotiations that led to the agreement, and there was substantial "give and take" by each side's technical experts on the equivalence of particular tracts and resources. We are confident that, as a whole, the May 8 Agreement reflects a transaction that is fair to both sides, and that provides each side with value substantially equivalent to the value it is relinquishing.

- There Are Major Intangible Benefits from Completing This Exchange.

The Trust Lands Administration takes its fiduciary duty of providing financial support to Utah's schools seriously. At the same time, we are citizens as well, who enjoy and appreciate our state's beautiful national parks, forests, and wild areas. The existence for many years of school trust lands within these areas has been a great frustration to us, as fulfilment of our legal duty to provide revenue to the schools - which would require sale or development of these lands - is in direct opposition to preservation of the lands. We have so far taken the high road, and for many years sought an exchange such as the one that is now before the Committee, rather than actively developing our sensitive lands. In future years, that might not have proved to be the case. H.R. 3830 offers the opportunity for the United States to end the threat of potential development within these beautiful areas, and to have perpetual and unified management of the lands for the purposes for which they were set aside. If any of the Committee has any questions about this particular issue, you need only look at the land ownership maps that are part of the record. The archaic checkerboard of state sections within the Monument and parks makes effective management difficult if not impossible. H.R. 3830 offers the opportunity to solve this problem once and for all.

In conclusion, I would suggest that one other intangible, but hugely important, benefit can come from the implementation of the May 8 Agreement - trust. The lingering problem of the P.L. 103-93 lands, the surprise designation of the Grand Staircase - Escalante National Monument, and the litigation that has

unsurprisingly followed, created an atmosphere of distrust between the State and the Department of Interior that is difficult to describe. In recent months, and culminating in the Agreement, that atmosphere of distrust has been replaced with a new spirit of communication and cooperation. A number of members of the Committee have helped with this pleasant change - the Trust Lands Administration would particularly thank Representatives Cannon, Hinchey and others for their efforts last year in requesting the Department of Interior to consider a negotiated solution, which has now occurred. If H.R. 3830 is passed, we will have resolved one of the thorniest western public lands issues, and set the stage for resolving other disputed issues through dialogue rather than public dispute.

On behalf of the Utah School and Institutional Trust Lands Administration, I urge the Committee and Congress to enact H.R. 3830 speedily and without encumbrance. Again, thank you for the opportunity to testify today.

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